

1 Honor. It's page 137, lines 4 through 7.

2 JUDGE SIPPEL: Thank you.

3 BY MR. KIM:

4 Q Isn't it true that in fact, you
5 know that your findings were not statistically
6 significant?

7 A I think what I said in my
8 deposition was that the sample size in the
9 online survey was not large enough to stand on
10 its own which is exactly why we did the phone
11 survey.

12 Q Do you recall being asked the
13 following question?

14 MR. KIM: Your Honor, page 134,
15 lines 9 through 22.

16 BY MR. KIM:

17 Q Question; "As an expert, when you
18 rely upon statistical data do you typically
19 give much weight to statistical data that is
20 not significant, statistically significant"?
21 Answer; "That is what I said. Again, it
22 depends on context. If we had -- I would

1 always want to review all of the available
2 data and in context consider all the available
3 data. Whether I relied on it or not is a
4 different matter, or whether it was
5 statistically significant is a different
6 matter. In this case, well, we clearly state
7 it is not. It doesn't rise to a level of
8 statistical significance. The responses were
9 nonetheless, consistent". Do you recall being
10 asked that question and giving that answer?

11 A I do.

12 Q Do you stand by that answer?

13 A I do.

14 Q Isn't it true, sir --

15 A However, I would state, we were
16 talking specifically about the online survey
17 which is why we did the phone survey. So I
18 wouldn't agree that that applied to all the
19 data. We were talking specifically about the
20 online survey.

21 Q Isn't it true, sir, that the
22 correct way to analyze her this data would be

1 through an equality of proportions test?

2 A I don't know that to be the case,
3 that that's the only way to do it.

4 Q And that would require you to
5 determine the standard error around the
6 proportions, correct?

7 A Again, I'm not a statistician. I
8 did not perform such an analysis.

9 Q Do you understand what a p value
10 is?

11 A A p value is the statistical test
12 that can be run on a proportion.

13 Q Is a p value the type of
14 acceptable type 1 error?

15 A Again, I'm not a statistician, so
16 I can't answer that question.

17 Q Do you know what a z value is?

18 A Yes. That is a test that can be
19 run to determine deviation from the mean.

20 Q What calculation distributions are
21 necessary to the z value?

22 A Again, I'm not a statistician. I

1 don't -- I can't tell you what those would be.

2 Q So is it fair to say that because
3 you never looked to see whether any of there
4 findings were statistically significant, you
5 can't sit up here and say that these results
6 could not be equally attributable to dumb
7 luck.

8 A Actually, that's precisely why I
9 worked with professional survey companies,
10 professional cross-temps and a highly
11 respected market researcher to do precisely
12 that.

13 Q They ran the surveys for you,
14 right, sir?

15 A They did.

16 Q They didn't sign your report, did
17 they?

18 A They did not.

19 Q They're not here testifying about
20 the opinions that you draw from the surveys
21 they ran, are they?

22 A That is correct.

1 Q Now, you say that the MLB sales
2 data, as well as the on-line survey and the
3 phone survey show similar patterns. Is that
4 correct?

5 A Yes.

6 MR. KIM: May I approach, your
7 Honor?

8 JUDGE SIPPEL: Please.

9 BY MR. KIM:

10 Q Mr. Gerbrandt, I'm showing you
11 what's been marked as MASN Exhibit Number 356
12 and I'll ask you, sir, whether you've ever
13 seen that document before?

14 JUDGE SIPPEL: Is this in evidence?

15 MR. KIM: No, it's not, your Honor.

16 JUDGE SIPPEL: Can we get an
17 identity on this? Maybe you can do that as
18 you go along.

19 MR. KIM: Yes.

20 BY MR. KIM:

21 Q Have you seen that before, sir?

22 A I have.

1 Q What is it?

2 A I believe these are summaries that
3 came out of my original expert report.

4 Q And, in fact, they're summaries
5 that came out of the documents that you put
6 into the record today, aren't they?

7 A Yes.

8 Q Now, let's look and see how your
9 tabulations, your rank ordering, actually
10 stacked up. Are you with me if I'm on the
11 Roanoke row of the document, MASN Exhibit 356?

12 A Yes.

13 Q Do you see the Dodgers in the on-
14 line survey listed as fourth?

15 A Yes.

16 Q Were the Dodgers listed on the top
17 five on the phone survey?

18 A They were not.

19 Q Were the Dodgers listed on the top
20 five of the merchandise sale survey?

21 A They were not.

22 Q Well, let's look at the Cubs.

1 They are second in the merchandise sales,
2 correct?

3 A That is correct.

4 Q Where are they in the top five of
5 the online survey?

6 A The Cubs don't appear in the
7 online survey.

8 Q And in the phone survey, they
9 ranked fourth, correct?

10 A That is correct.

11 Q Now, let's look at the Tri-Cities.
12 In the online survey, there are five different
13 teams that have all tied for second place in
14 Tri-Cities, correct?

15 A Correct.

16 Q Four of the five don't even show
17 up in the top five of the phone survey,
18 correct?

19 A That is correct.

20 Q Okay, and that would be, just for
21 the record, the Mets, they're tied for second
22 in the online survey, right?

1 A Correct.

2 Q And they don't appear on the top
3 five of the phone survey, right?

4 A That is correct.

5 Q Dodgers, second tied in the online
6 survey, right?

7 A Correct.

8 Q Don't appear in the top five in
9 the phone survey, correct?

10 A That is correct.

11 Q Reds, appear second tie in the
12 online survey and don't appear anywhere in the
13 -- I'm sorry, in the top five in the phone
14 survey, correct?

15 A Correct.

16 Q And the same is true of the
17 Phillies, right?

18 A That is correct.

19 Q Now, let's look at Harrisburg. Do
20 you see the Pirates showing up as third on the
21 phone survey and third in the online survey?

22 A I do.

1 Q Where are they in the top five of
2 merchandise sales?

3 A They do not appear.

4 Q Let's also look at the Orioles in
5 the Harrisburg survey, the phone survey. They
6 are tied for fourth, correct?

7 A In the phone survey, that's
8 correct.

9 Q How far are they away from the
10 Pirates in third place?

11 A One percentage point.

12 Q And how far are they away from the
13 Yankees in second place?

14 A Four percentage points.

15 Q You never did a determination to
16 see whether those deviations of one percent
17 and four percent are statistically
18 significant, correct?

19 A That is correct.

20 Q Mr. Gerbrandt, did you ever
21 consider conducting a regression analysis to
22 try and interpret the relationship among these

1 three surveys?

2 A What I did do was I calculated a
3 correlations coefficient which --

4 MR. KIM: Objection, your Honor.

5 THE WITNESS: -- which had its
6 core --

7 JUDGE SIPPEL: Wait, wait, wait,
8 wait, hold it, hold it, hold it, hold it.
9 Start again.

10 MR. KIM: Sure.

11 JUDGE SIPPEL: And Mr Gerbrandt,
12 just listen to the question.

13 MR. KIM: A very simple question.

14 BY MR. KIM:

15 Q Did you ever consider conducting a
16 regression analysis to determine the
17 relationship among these three studies?

18 A Yes.

19 Q Isn't it true, sir, that when I
20 asked you whether a regression analysis could
21 be done with more than two variables, you said
22 you didn't know?

1 A Well, you said "among the three".

2 I did conduct one comparing them individually.

3 Q That was a regression analysis?

4 A Well, a correlation coefficient is
5 measured at its core, calculates a regression
6 line and then the correlation coefficient
7 calculates the deviation from that regression
8 line. So the core -- if you compare two data
9 sets, your -- and calculate a correlation
10 coefficient, at its core is a regression.
11 It's done based on calculating a regression
12 line. I mean, that's what the computer does.

13 JUDGE SIPPEL: No, that's not
14 responsive to the question.

15 MR. KIM: Your Honor, move to
16 strike.

17 JUDGE SIPPEL: It's stricken.

18 BY MR. KING:

19 Q Mr. Gerbrandt --

20 JUDGE SIPPEL: Listen carefully,
21 sir.

22 BY MR. KIM:

1 Q -- did you conduct a regression
2 analysis to analyze these three studies and
3 inter-relationship between -- among them?

4 A Not all three.

5 Q And now is it your testimony that
6 you consider determining the correlation
7 between two of them to be a regression
8 analysis? I just want the record to be clear.
9 Is that your understanding?

10 A That's not what I said, no, but
11 I'll --

12 Q And you don't believe that, do
13 you?

14 A No.

15 Q Now, is it true, sir, that your
16 survey, both your online survey and your phone
17 survey asked another question that you didn't
18 analyze? "Please rate your interest in each
19 of the MLB teams listed below".

20 A That was the -- one of the aided
21 questions, that's correct.

22 Q And you approved the asking of

1 that question, correct?

2 A I did.

3 Q But you did not analyze the
4 results that followed from that question.

5 A After I reviewed -- that is
6 correct, I didn't.

7 Q Now, the people were asked to
8 respond from a zero to five scale, correct?

9 A That is correct.

10 Q And five being, "I like them a
11 lot", correct, very high interest?

12 A Correct. We could go back and
13 find out what -- how we actually phrased it
14 but --

15 Q Just so I'm clear, the question
16 was, "Please rate your interest in each of the
17 MLB teams listed below, zero being no interest
18 and five being high interest", correct? You
19 look at the documents and you tell me when
20 you're ready to answer.

21 (Pause)

22 A I believe the term that was used

1 was very interested.

2 Q Is five very interested?

3 A Yes, but that's not what you said.

4 Q So zero would be no interest.

5 A Not interested at all, that's

6 correct.

7 Q And five would be very interested.

8 A Correct.

9 Q And four would be obviously,
10 interested or highly interested, somewhere
11 short of very.

12 A Correct. They were asked to
13 choose a number on a scale, that's correct,

14 Q And Mr. Gerbrandt, as an expert in
15 the field of what consumers want, you would
16 agree with me that people could watch more
17 than the team they followed the most, right?

18 A Yes.

19 Q If you had to choose among your
20 children, you might pick your favorite, but
21 that doesn't mean you don't love all your
22 children, right?

1 JUDGE SIPPEL: I'm not going to let
2 that question stand.

3 MR. KIM: Very well, your Honor.
4 May I approach the witness?

5 JUDGE SIPPEL: Yes, you may.

6 MR. KIM: Mr. Gerbrandt, I'm
7 showing you what's been marked as MASN Exhibit
8 Number 351 and I'll ask you whether you
9 recognize that document, sir.

10 JUDGE SIPPEL: What about -- I
11 think that 356 has been sufficiently
12 identified.

13 MR. KIM: Oh, yes, your Honor, I
14 would offer it into evidence at this time.

15 JUDGE SIPPEL: Any objections, Mr.
16 Kirk?

17 MR. KIRK: No objection.

18 JUDGE SIPPEL: It's received.

19 Thank you.

20 (The document referred to having
21 been previously marked as Exhibit
22 Number MASN 356 for identification

1 was received in evidence.)

2 JUDGE SIPPEL: All right, 351, this
3 is not in evidence yet; is that correct?

4 MR. KIM: No, your Honor, I'm
5 asking the witness whether he recognizes it.

6 JUDGE SIPPEL: Thank you.

7 THE WITNESS: Well, I don't
8 recognize this exhibit. I recognize the data,
9 though.

10 BY MR. KIM:

11 Q Okay, and the data is derived from
12 the survey that you conducted, correct?

13 A Correct.

14 Q And I put this in this format, Mr.
15 Gerbrandt for each of exposition. Obviously,
16 if you prefer to refer to the actual reports,
17 they're cited in there for you to look at,
18 okay?

19 A Okay.

20 Q And the source information is
21 contained at the top. Do you see that?

22 A I do.

1 Q Okay, and I will represent to you
2 that I put this together myself and I believe
3 it is accurate in terms of both rank order and
4 percentages, but to the extent I'm wrong,
5 please feel free to correct me by looking at
6 the original source data. Fair enough?

7 A Okay.

8 Q Now, this is the top two box
9 summary; is it not?

10 A Yes.

11 Q And the top two box is four and
12 five ratings, correct?

13 A Correct.

14 Q And the four and five ratings are
15 the people who expressed the highest level of
16 interest in watching -- I'm sorry, in any of
17 the major league teams that they were asked
18 about, correct?

19 A Correct.

20 Q Now, isn't it true that the
21 Orioles or the Nationals or both ranked among
22 the top five teams in every market according

1 to your surveys?

2 A Expressed like that, I agree.

3 Q And, in fact, in Roanoke, on the
4 online survey, they are second, correct, the
5 Orioles?

6 A Correct.

7 Q And they're fourth on the phone
8 survey in Roanoke, correct?

9 A Correct.

10 Q They are fourth in the phone
11 survey in the Tri-Cities, the Orioles are,
12 correct?

13 A Correct.

14 Q And the Nationals are second in
15 the online survey in the Tri-Cities area.

16 A Correct.

17 Q And in Harrisburg, the Orioles
18 show up fifth in your phone survey, correct?

19 A Correct.

20 Q And they show up third in the
21 online survey; am I right?

22 A Correct.

1 Q But, sir, you understand, do you
2 not, that MASN carries the games of both the
3 Orioles and the Nationals?

4 A Yes.

5 Q And so to properly measure demand
6 for MASN, you need to aggregate the interest
7 in the Orioles and the Nationals; isn't that
8 right?

9 A I know where --

10 JUDGE SIPPEL: Can you answer the
11 question?

12 THE WITNESS: I understand.

13 JUDGE SIPPEL: Can you answer the
14 question?

15 THE WITNESS: No, you don't do it
16 that way.

17 BY MR. KIM:

18 Q Well, isn't it true that if you
19 just look at the Orioles respondents, you'd be
20 missing out on Nationals' fans?

21 A No, that's why the question was
22 asked about each team. So we didn't miss --

1 you know, they weren't missed. I fail to
2 understand -- I disagree.

3 Q Okay, so in your expert opinion,
4 you cannot combine the Orioles and the
5 National responses to get a better gauge of
6 what the demand for MASN would be.

7 A Abso -- the way you've done it
8 here, absolutely not because this is double-
9 counting.

10 Q Well, let's see about that. As I
11 see it, there are three possibilities. Okay,
12 let me go through them one-by-one. The first
13 possibility is all the people that express an
14 interest in the Orioles in the top two box,
15 are different from the people who express an
16 interest in the Nationals in the top two box,
17 possible, correct?

18 A Extremely unlikely.

19 Q If you'll just work with me for a
20 second, is it possible?

21 A Theoretically.

22 Q You'll like the second one better.

1 The second possibility is that they're exactly
2 the same group of people, that everyone
3 indicated the top two box interest in the
4 Orioles, also indicated a top two box interest
5 in the Nationals, correct?

6 A Theoretically, I suppose that
7 could happen.

8 Q Okay, and the third possibility is
9 probably the most likely, which is that some
10 of the people who expressed an interest in the
11 Orioles also expressed an interest in the
12 Nationals and vice versa, correct?

13 A Correct.

14 Q So to properly measure interest in
15 MASN, you've got to go up from just the
16 Orioles or just the National's interest,
17 correct?

18 A Okay, I'm with you so far that you
19 -- that you would want to look at both teams,
20 that is correct.

21 Q Correct. And so if you look at
22 each one individually, on this survey, that

1 would be too low, correct?

2 A If you were looking for the
3 superset of the individuals who ranked the
4 Orioles and the Nationals in the top two box,
5 or the -- I guess it would actually be a
6 subset, yes, but you can't get there from this
7 data.

8 Q Well, isn't it true that even if
9 you look at fans who are being double-counted,
10 because I am one fan and I express a top two
11 box interest, I express a five interest in the
12 Orioles and a five interest in the Nationals,
13 that my intensity of interest for MASN is,
14 therefore, higher, correct?

15 A No, you've already expressed a
16 five interest in either one, so I'm not sure -
17 - I don't think expressing a five interest on
18 both makes you higher than five.

19 Q Well, let's see about that. Let's
20 suppose that Jack just expressed a five
21 interest in the Orioles. And let's say that
22 Jill expressed a five interest in the Orioles

1 and the Nationals. Isn't it true that Jill
2 will have a higher preference for MASN than
3 Jack does?

4 A He already had a five.

5 Q So it's your testimony that you
6 would not measure thy intensity of that
7 desire. That's your testimony.

8 A You can't get there from this
9 data. You would have to ask the question in
10 a different way. To do it the way you are
11 suggesting, you can't get there from this
12 data.

13 Q So it's your testimony that those
14 kinds of considerations would be irrelevant.

15 A I didn't say they were irrelevant.
16 I'm saying you can't draw that conclusion from
17 this data because you would be double-counting
18 individuals.

19 Q My point, Mr. Gerbrandt and maybe
20 I'm just saying it incorrectly, exactly.
21 Don't you want to double-count those
22 individuals because of the intensity of their

1 desire for both the Orioles and the Nationals?

2 A But we already counted them by
3 giving them a chance to express the interest
4 individually.

5 Q Is it your testimony that Jill
6 used the Nationals -- used MASN programming to
7 the same degree as Jack?

8 A If you were trying to do that, I
9 would want to conduct a different kind of
10 survey. If that -- if that particular
11 proposition was one what I was trying to
12 measure, then we would probably set the survey
13 questions up in a different fashion.

14 Q I'm asking about the survey that
15 you actually ran.

16 A I understand and that's what I'm
17 saying, it wasn't designed to answer the
18 proposition that you just put forward, so I
19 couldn't get there from here.

20 Q Mr. Gerbrandt, I'm asking a
21 different question.

22 A Okay.

1 Q Given the question that you asked
2 and the data that you accrued, do you believe
3 that Jack's desire for MASN is greater than,
4 equal to or less than Jill's?

5 A As already expressed, both of them
6 have already expressed a five in one of the
7 two teams. So they're already at a five --

8 Q So it's your position --

9 A -- in terms of the interest in the
10 team, in a team that they carried.

11 Q So it's your position that Jill's
12 desire for MASN is no greater than Jack's even
13 though Jill rates both the Nationals and the
14 Orioles at five?

15 A She's already at a five.

16 Q Isn't it true, sir, that if one
17 does accept my premise and add the preference
18 for the Orioles and the Nationals together,
19 that they rank at a one, two, or three level
20 in every market that we're talking about?

21 A If I were to do -- to accept the
22 incorrect assumption of how to do it, then I